

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

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	:	
AND	:	CASES 04-CA-182126,
	:	04-CA-186281, and
UNITED STEEL, PAPER AND FORESTRY,	:	04-CA-188990
RUBBER, MANUFACTURING, ENERGY,	:	
ALLIED-INDUSTRIAL AND SERVICE	:	
WORKERS INTERNATIONAL UNION,	:	
AFL-CIO/CLC	:	
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RESPONDENT’S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE’S DECISION

Pursuant to Section 102.46(a) of the Board’s Rules and Regulations, Respondent, Wyman Gordon of Pennsylvania (Employer or Respondent), files the following exceptions to Administrative Law Judge Arthur J. Amchan’s July 13, 2018 Decision. The specific grounds for these exceptions and citation of authorities are set forth in Respondent’s supporting brief.

Exception 1: To the judge’s finding that “things that had changed between April and October 2016 were the alleged commission of unfair labor practice charges.” (Decision p. 3, line 6.)

Exception 2: To the judge’s finding that “employees had not granted [*sic*] a wage increase on August 1, as in past years without bargaining with the Union about the increase.” (Decision p. 3, line 7.)

Exception 3: To the judge’s failure to give weight to the fact that 12 bargaining sessions were “conducted during the last 3 and ½ months (August-November) prior to Respondent withdrawing recognition of the Union on November 29, 2016” while finding that “negotiations

between the Union and Respondent had dragged on for another 6 months.” (Decision p. 2, line 22 and p. 3, line 9.)

Exception 4: To the judge’s finding that Brink “never told any of these employees that Respondent had an obligation to bargain in good faith with the Union and execute a collective bargaining agreement with it if an overall agreement was reached.” (Decision p. 3, line 19.)

Exception 5: To the judge’s determination that the fact that certain pages contained signatures and blank lines invalidates the petition. (Decision p. 3, line 34.)

Exception 6: To the judge’s finding that “Without [an inquiry as to why certain pages of the petition contained only signatures and why some pages contained empty signature lines], Respondent could reasonably conclude only that 9 of the 43 unit employees wished to terminate union representation.” (Decision p. 3, line 41.)

Exception 7: To the judge discrediting Tim Brink’s testimony regarding the signatures on the petition. (Decision p. 3, line 45.)

Exception 8: To the judge’s finding that there is “no evidence that every employee whose name appears on the petition was employed at Tru From at the time Brink reviewed these sheets.” (Decision p. 4, line 1.)

Exception 9: To the judge’s finding that “Brink would have had no way of knowing whether or not the signatures of these employees were authentic.” (Decision p. 4, line 3.)

Exception 10: To the judge discrediting Tim Brink’s testimony that he recognized the signatures of new hires from documents he may have seen when these employees were hired or afterwards.” (Decision, p. 4.)

Exception 11: To the judge’s discrediting other reasons provided by Respondent for why it withdrew recognition. (Decision p. 4, footnote 6.)

Exception 12: To the judge's application of *Levitz Furniture Co. of the Pacific*, 333 NLRB 717, 725 (2001).

Exception 13: To the judge's determination that "Respondent failed to establish that the Union had lost majority status as of November 29, 2016." (Decision p. 4, line 21.)

Exception 14: To the judge's determination that Respondent "failed to prove that it had objective evidence of a loss of majority status on November 29, 2016." (Decision p. 4, line 22.)

Exception 15: To the judge's determination that "Even under pre-*Levitz* standard, Respondent did not have a reasonable basis for concluding that the Union had lost majority status at the time it withdrew recognition." (Decision 4, line 23.)

Exception 16: To the judge's failure to apply *Dura Art Stone, Inc.*, 346 NLRB 149 (2005).

Exception 17: To the judge's finding that the petition presented did not unambiguously state that the signers, constituting a majority of the bargaining unit, do not wish to be represented by the Union. (Decision page 5, line 1.)

Exception 18: To the judge's finding that the Respondent did not satisfy its burden to establish that the Union had lost majority support. (Decision p. 5, line 2.)

Exception 19: To the judge's finding that the Respondent did not have a good faith belief that the Union had lost majority support. (Decision page 5, line 4.)

Exception 20: To the judge's finding that the evidence adduced in the hearing did not establish that "8 of these 14 employees knowingly signed a petition eschewing union representation." (Decision p. 5, line 7.)

Exception 21: To the judge's finding that "only 15 employees, the 8 on page 1 and 7 of the signatories on page 2 expressed a desire that the Union no longer represented them." (Decision p. 5, line 12.)

Exception 22: To the judge's failure, at the very least to find that 16 employees (the 8 on page 1, the 7 on page 2 and the 1 on page 5) expressed a desire that the Union no longer represented them. (Decision p. 3, lines 33 and 35, and p. 5., line 12.)

Exception 23: To the judge's discrediting William Berlew's testimony that he presented the pages of the petition, including the first page which stated that the undersigned employees do not want to be represented by the Union, to each signer, including Steven Brotzman. (Decision p. 5, line 33.)

Exception 24: To the judge's crediting the testimony of Steven Brotzman, who testified that Berlew only presented him with one blank page and he thought he was signing for a new election to strengthen the Union, and who lied at the hearing about the reasons for his termination from employment, stating that he was fired for "poor quality" when he was in fact fired for falsifying inspection reports. (Decision p. 5, line 32.)

Exception 25: To the judge's finding that "the circumstances surrounding pages 3, 4 and 5 give credence to Brotzman's testimony and led [him] to discredit Berlew." (Decision p. 5, line 40.)

Exception 26: To the judge's criticism of the petition in the context of the involvement of the NRTWF. (Decision p. 6, line 4.)

Exception 27: To the judge's determination that "either [Berlew] or [Shovelin] had page 1 of the [petition] on October 19 and 20, but not both." (Decision p. 6, footnote 9.)

Exception 28: To the judge's analysis regarding who had possession of the petition on October 19 and 20. (Decision p. 6, line 19.)

Exception 29: To the judge's finding that "The fact that Berlew testified that he obtained Brian Mikolsko's signature on October 14, Brotzman's on October 19 and Bob Wallace's on

October 20, strongly suggests that Shovlin was not in possession of the entire petition on October 19 and 20.” (Decision p. 6, line 26.)

Exception 30: To the judge’s discrediting Shovlin’s testimony that he presented the entire packet to Petrak, Filipkoski and Cook. (Decision 6, line 38.)

Exception 31: To the judge’s giving weight to the fact that Petrak, Filipkoski and Cook did not testify at the hearing, where the judge made clear he would not allow all petition signers to testify. (Decision p. 6, line 38.)

Exception 32: To the judge’s finding that “Shovlin offered no convincing explanation as to why Petrak, Filipkoski and Cook signed on page 3, when there were 2 empty signature lines on page 2.” (Decision p. 7, line 4.)

Exception 33: To the judge’s determination that Respondent has not established that Petrak, Filipkoski and Cook signed anything other than a blank piece of paper. (Decision p. 7, line 5.)

Exception 34: To the judge crediting Brotzman’s testimony, as opposed to Berlew’s regarding whether Wallace knowingly signed the petition. (Decision p. 7, line 7.0)

Exception 35: To the judge’s finding that Wallace signed a blank sheet of paper. (Decision p. 7, line 8.)

Exception 36: To the judge’s finding that there was “absolutely no credible evidence confirming that the signatures of Timothy Ancherani or Kevin Foster are authentic, who obtained these signatures, or the circumstances under which their signatures appear on pages 4 and 5 of the document respectively.” (Decision p. 7, line 12.)

Exception 37: To the judge’s finding that Ancherani signed a blank document. (Decision p. 7, line 16.)

Exception 38: To the judge's finding that Antosh did not obtain Foster's signature on the petition. (Decision p. 7, line 20.)

Exception 39: To the judge's finding that there is no evidence as to when Ancherani or Foster began working at the Tru-Form plant and therefore there is no basis for concluding that Tim Brink could have determined that their signatures were authentic. (Decision 7, line 29.)

Exception 40: To the judge's determination that there is no evidence authenticating the signature of Jonathan Buselli or the circumstances under which he signed the petition. (Decision p. 7, footnote 10.)

Exception 41: To the judge's determination that without establishing that Brotzman, Ancheranis, Foster, Petrak, Filipkoski and Cook knowingly signed a petition asking for withdrawal of recognition, Respondent has only established that 17 of 43 names can be counted as desiring withdrawal. (Decision p. 7, line 34.)

Exception 42: To the judge's failure to credit Josh Antosh's testimony regarding Tim Ancherani's request to sign the petition. (Decision p. 8, line 23.)

Exception 43: To the judge's rejection of Stan Cegelka's testimony regarding Ancherani and Bob Wallace's knowingly signing the petition. (Decision p. 8, line 23.)

Exception 44: To the judge's findings and conclusions regarding the validity of the Employees' petition demanding withdrawal of recognition. (Decision p. 8, lines 30-36, p. 9 lines 1-16.)

Exception 45: To the judge's conclusion that the Respondent failed to establish that the Union had lost majority support. (Decision p. 8, line 30.)

Exception 46: To the judge's conclusion that the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union and refusing to bargain with it after November 29, 2016. (Decision p. 8, line 31.)

Exception 47: To the judge's conclusion that Respondent failed to establish that it had objective evidence that the Union lost majority support at the time it withdrew recognition. (Decision p. 8, line 36.)

Exception 48: To the judge's conclusion that Respondent failed to establish "even a year and a half later" that the Union lost majority support as of November 29, 2016. (Decision p. 9, line 3.)

Exception 49: To the judge's conclusion that Respondent failed to establish that 7 of the 23 document signers signed anything other than a blank sheet of paper. (Decision p. 9, line 5.)

Exception 50: To the judge's finding that Brian Mikolosko, Steve Brotzman, Timothy Ancherani, Joseph Petrak, Bryan Filipkoski, Greg Cook and Bob Wallace signed anything other than a blank document or that they knew that they were signing a petition to decertify (or get rid fo) the Union. (Decision p. 9, line 8.)

Exception 51: To the judge dismissing the evidence that "every employee who testified said he signed the petition with the first page present and that every employee who testified reaffirmed that they did not want USW representation." (Decision p. 9, line 13.)

Exception 52: To the judge giving weight to the fact that "none of the signatories whose intentions are mot questionable testified" after stating that he would not allow testimony from all petition signers. (Decision p. 9, line 15.)

Exception 53: To the judge's finding that Respondent insisted throughout negotiations that pursuant to the ground rules that the parties negotiated for bargaining on September 17, 2015, it

was not required to and would not bargain about economic matters until all non-economic matters were resolved. (Decision p. 13, line 44.)

Exception 54: To the judge's finding that Respondent violated Section 8(a)(5) and 8(a)(1) in refusing indefinitely to bargain about economic matters until non-economic matters were resolved. (Decision p. 14, line 19.)

Exception 55: To the judge's finding that the ground rules "by their terms do not require resolution of all non-economic items prior to bargaining about economics." (Decision p. 14, line 22.)

Exception 56: To the judge's finding that even if the ground rules did require resolution of all non-economic items prior to bargaining about economics, "Respondent was not privileged to demand adherence to the ground rules after almost a year of bargaining with little progress." (Decision p. 14, line 24.)

Exception 57: To the judge's finding that the Union demanded a comprehensive response to its proposal based on the Mountain Top contract. (Decision p. 14, line 31.)

Exception 58: To the judge's finding that Respondent never gave the Union a comprehensive response. (Decision p. 14, line 33.)

Exception 59: To the judge's finding that, prior to August 26, 2016, Respondent provided a response or counter proposal to 7 of the 29 articles in the Union's proposal. (Decision p. 14, line 35.)

Exception 60: To the judge's finding that "it is uncontroverted that Respondent never provided a written response to the 2015 union proposals on reporting pay, call-in pay, insurance benefits and employee contributions during the term of the contract, hours, vacation, holidays, wage increases during the term of the contract, new classifications and rates, 401(k) plan, rights

and assigns, termination and reopening of the contract, timekeeping, flexible spending accounts and COBRA.” (Decision p. 14, line 42 – p. 15, line 4.)

Exception 61: To the judge’s conclusion that Respondent violated Section 8(a)(5) and (1) in its failure to make responsive proposals. (Decision p. 15, line 5.)

Exception 62: To the judge’s application of *Fallbrook Hospital*, 360 NLRB 644, 652 (2014) and *Whisper Soft Mills, Inc.*, 267 NLRB 813, 814-15 (1983).

Exception 63: To the judge’s conclusion that the “continued lack of progress in negotiations due this failure was likely to cause dissatisfaction with the Union as evidenced from the timing of the decertification petition.” (Decision p. 15, line 7.)

Exception 64: To the judge’s conclusion that Respondent refused to negotiate economic matters and that such refusal would have tainted any petition signed by Employees. (Decision p. 15, line 9.)

Exception 65: To the judge’s finding that Respondent refused to negotiate on economic matters. (Decision p. 15, line 22.)

Exception 66: To the judge’s finding that Respondent had an obligation to make a comprehensive response to the Union’s comprehensive proposal. (Decision p. 15, line 22.)

Exception 67: To the judge’s finding that Respondent failed to make a comprehensive response to the Union’s comprehensive proposal. (Decision p. 15, line 22.)

Exception 68: To the judge’s finding that Respondent dragged out negotiations for 14 months. (Decision p. 15, line 24.)

Exception 69: To the judge’s finding that “the continued dragging out of negotiations 14 months after they started and 2 ½ years after employees voted for union representation was likely to cause unit employees, other than those previously opposed to union representation, to support a

decertification petition circulated by anti-union employees out of a sense that continued representation was a futile exercise.” (Decision p. 15, line 24.)

Exception 70: To the judge’s failure to find that the petition signers were historically against the Union and/or were new employees: there was no evidence that any employee “switched sides.”

Exception 71: To the judge’s conclusion that “these violations” tainted any decertification petition. (Decision p. 15, line 28.)

Exception 72: To the judge’s finding that the Union was entitled to information related to the calculation to the Quarterly Cash Bonus, an issue not before the judge in this case. (Decision p. 16, line 18.)

Exception 73: To the judge’s conclusion that the Respondent violated the Act by not providing sales figures to the Union. (Decision p. 16, line 22.)

Exception 74: To the judge’s finding that the Union was entitled to the health insurance plan document. (Decision p. 16, line 39.)

Exception 75: To the judge’s conclusion that Respondent violated the Act by not providing the comprehensive health insurance plan document. (Decision p. 16, line 40.)

Exception 76: To the judge’s conclusion that Respondent violated the Act by not providing written communications to unit employees announcing or explaining health insurance plans, benefits or contributions for the period between January 1, 2013 and December 31, 2014. (Decision p. 16, line 42.)

Exception 77: To the judge’s finding that the Union proposed wage increases in line with those the company had given for the past several years. (Decision p. 17, line 17.)

Exception 78: To the judge's finding that Respondent told the Union it would not do so in 2016 "because it did not want its customers to be faced with a 15% increase in its prices." (Decision p. 17, line 18.)

Exception 79: To the judge's finding that the Union was entitled to requested information regarding pricing, labor costs and the identity of Respondent's primary competitors and their pricing. (Decision p. 17, line 20.)

Exception 80: To the judge's conclusion that Respondent violated Section 8(a)(5) and (1) in refusing to provide the pricing and other competitive information to the Union. (Decision p. 17, line 23.)

Exception 81: To the judge's stated remedies. (Decision, p. 17, lines 29-46, p. 18, lines 1-14.)

Exception 82: To the judge's recommended order. (Decision, p. 18, lines 18-46, p. 19, lines 1-22.)

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September 17, 2018

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of September, 2018, I e-filed the foregoing **RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION** with the National Labor Relations Board's Office of the Executive Secretary, and served a copy of the foregoing document via e-mail to all parties in interest, as listed below:

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